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# MEMORANDUM

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**TO:** City Council

**FROM:** Marvin S. Krout, Director of Planning

**SUBJECT:** Change of Zone No. 3415 (03-125)  
Miscellaneous No. 03005 (03-126)  
Miscellaneous No. 03008 (03-127)  
Miscellaneous No. 03007 (03R-215)

**DATE:** August 7, 2003

**COPIES:** Mayor Coleen J. Seng  
City Attorney  
City Clerk  
Ray Hill  
Carol Brown, Chair, Mayor's Neighborhood Roundtable

The above referenced applications were introduced on the City Council agenda on August 4, 2003, and are scheduled for public hearing before the City Council on **Monday, August 11, 2003**. The Factsheets and ordinances/resolution were submitted with your packets on July 31, 2003. This memorandum is submitted as supplemental information and should be incorporated with the Factsheets.

On August 6, 2003, the Planning Commission held a public hearing on the proposals. No member of the public testified either in support or opposition to the staff proposals. The Planning Commission voted to recommend approval of the proposals with two exceptions. They expressed concerns about how the proposed fee to amend the Comprehensive Plan might limit public input, and also felt that citizens should be able to appeal their decisions to the elected boards without paying a fee. The Commission took the following action:

Bill No. 03-125: Change of Zone No. 3415 (Title 27): **Approval**, 9-0

Bill No. 03-126: Miscellaneous No. 03005 (Title 26): **Approval**, 9-0, with amendment to § 26.33.110, **deleting** "...or to appeal one or more conditions of approval to a higher level of authority,...".

Bill No. 03-127: Miscellaneous No. 03008 (Title 14): **Approval**, 9-0.

Bill No. 03R-215: Miscellaneous No. 03007 (authorizing the Planning Department to collect a fee for requests to amend the Comprehensive Plan): **Denial**, 8-1 (Taylor dissenting).

On August 6, 2003, the Planning Commission also voted unanimously to **approve** companion amendments to the County zoning and subdivision resolutions to increase application fees and to require a fee for postponement resulting in publication and distribution of additional notices.

The minutes of the Planning Commission hearing and action are attached for your information. If you have any questions, please feel free to contact me at 441-6366.

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**COUNTY CHANGE OF ZONE NO. 215,  
COUNTY MISCELLANEOUS NO. 03006,  
CHANGE OF ZONE NO. 3415,  
MISCELLANEOUS NO. 03005,  
CITY/COUNTY MISCELLANEOUS NO. 03007,  
and MISCELLANEOUS NO. 03008,**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

August 6, 2003

Members present: Bills-Strand, Larson, Duvall, Carlson, Krieser, Taylor, Marvin, Steward and Schwinn.

Staff recommendation: Approval.

Ex Parte Communications: None.

Proponents

1. **Ray Hill** of Planning staff presented the proposal to increase application filing fees and proposed amendments to certain procedures. The purpose of the increase in fees is to help offset the cost of reviewing and processing the applications through the Planning Department. This increase will not have a significant impact on the cost of housing and development in the community.

As a general rule, the filing fees are proposed to be increased by 25%. In the County Zoning Resolution, a fee is proposed to be added that deals with the postponement of items that require additional advertising and property owner notification. This will help offset the costs of sending out an additional notice to the residents and the publishing of the legal ad.

With regard to the County Subdivision Resolution, a fee has been added for requests to amend the text of the resolution. If someone wants to change the written law of the County Subdivision Resolution, they would pay a fee.

With regard to the City Zoning Ordinance, the proposal includes an increase in the filing fees of approximately 25%. The proposal also eliminates the sections in the O-3, B-2, B-5 and I-3 districts that require a combination special permit/use permit.

With regard to the City Land Subdivision Ordinance, the proposal attempts to streamline development, changing the procedures such that all final plats are approved by the Planning Director as opposed to coming before the Planning Commission. This will save

time in the processing of final plats. Once the conditions have been completed and the sureties posted, the Director of Planning can immediately sign it and it can be filed with the Register of Deeds. At the present time, there is at least a 10 day delay plus the 14 day appeal period before final plats can be approved.

A change initiated by the Parks Department removes the requirement for a landscape plan to be submitted with the preliminary plat. The landscape plan would be required to be submitted with each of the individual final plats instead.

In the Land Subdivision Ordinance, a fee has been added for waiver requests and requests for street name change, which is an extensive process. Likewise, a fee is proposed for any type of postponement that requires a new legal ad and additional notice to property owners.

Hill amended the proposal by indicating that the proposed method to allow waivers as set forth on p.197 and 204 of the agenda (p.7 and 14 of the text on Chapter 26.11) would fall under a different section of the Land Subdivision Ordinance which was not advertised. These two amendments will come forward on August 20<sup>th</sup>.

With regard to the proposed fee for Comprehensive Plan Amendment requests, Hill advised that these amendments require a lot of staff review and preparation, and they are presented to the Planning Commission, City Council and County Board.

The proposal to amend Title 14 will help speed up the process for vacating a street. The petition to vacate will be filed with the Planning Director, routed to other agencies for review with the same timeline as other applications. In the past, there has never been a public notice to the surrounding neighbors of the public hearing on a street vacation and this amendment proposes to do that.

Steward expressed concern about the fee for Comprehensive Plan Amendment requests. It is not clear to him where a couple of potential requests for revisions could come from and how they would be treated. What happens if a Planning Commissioner requests that an amendment be processed? Hill advised that it would be the staff recommendation that the Commission is exempt from a filing fee. Steward suggested that the other potential entity is a neighborhood group or a group of private citizens rather than a developer or public agency. Hill suggested that a neighborhood group or private citizen would be treated as the applicant and would be required to pay the fee.

Larson was interested in the total financial impact for the Department. Hill stated that he does not know for sure. The filing fees were increased back in 1999, which did not generate the additional revenue anticipated. Part of this is to help catch up on that revenue. Marvin wondered how we missed the mark so much if the fees were doubled in 1999. Hill's response was that the amount of fees that would be collected was underestimated.

Steward returned to the Comprehensive Plan Amendment request issue. By treating a group of citizens as an individual applicant, he is afraid there is going to be an unintended consequence. He believes it will politicize engagement of this Commission because the first attempt will be to get a Commissioner to sponsor a change to the Comprehensive Plan. He is not comfortable with that. Hill pointed out that individuals and groups are required to pay for change of zone applications just like any other applicant, developer, etc.

Schwinn inquired whether there is a cost analysis system in place in order to gauge what it costs to run an application through the system. Hill indicated that there was not a cost analysis system in place because each and every project has a whole lot of different issues that have to be considered. The fixed costs are the letter notices and legal ads. The rest depends upon the complexity of the project, including attendance at neighborhood meetings, night meetings, meetings with developers, public hearings, etc. These proposed fees do not even come close to the cost involved in staff review. Schwinn commented that, in general, the Planning Department represents the public interest. And Hill suggested that to be the reason why the fees are not based upon the actual hours spent on a project.

Carlson inquired whether a Council member could bring forward a Comprehensive Plan Amendment. Hill believes that anyone who is administering the Comprehensive Plan can make application. Rick Peo of the City Law Department referred to language in the City Charter, which provides that the Planning Director is the responsible for preparing the Comprehensive Plan and any amendments submitted, including those submitted by the City Council. Beyond that, any individual Council member or other agencies do not have the ability to demand that an amendment be proposed or submitted. We have expanded that concept by allowing individuals to request an amendment, but that is not mandated by the City Charter. This proposal adds the cost of advertising and processing to be paid by those requesting the amendment, but governmental bodies would be a different classification. Peo also pointed out that individuals have always had the option, during the Annual Review, to come forward and move to amend the Planning Director's recommendation. This proposed concept allows that to be processed more orderly. The public is not denied the opportunity to present their views. In the past, we have never required anyone to pay to process a Comprehensive Plan Amendment, and now we are asking for individuals to pay a fee to help pay for the process.

Carlson agrees that we do not want people lobbying the Commission to bring amendments forward. Could they contact the Council and ask them to bring it forward? Peo stated that if the entire Council voted to bring an amendment forward, it would happen.

There was no testimony in opposition.

Carlson had a concern about notification of administrative actions. Is it possible to devise a policy where if someone has spoken on a preliminary plat, that they be added to a mailing list to be notified when the final plat is in process or going to be approved. If something changes between the preliminary plat and the final plat, how would an aggrieved person know? Hill advised that, by law, a final plat can only be approved if it is found to be in substantial compliance with the approved preliminary plat. The decision was made when the preliminary plat was approved, and for anyone to then change that final plat so that it does not conform, then the Planning Director cannot approve it. Carlson was a little concerned about "substantial compliance", and he believes it is important that someone have the opportunity to know if something has changed. Hill advised that the ultimate intent is to list all applications in process on the website, but at the present time, we do not have that capability. Hill also pointed out that there are many applications that the Planning Director approves administratively now. The Director has authority to approve administrative amendments to special permits, use permits and community unit plans under certain guidelines. It is at the discretion of the Director. For example, there was a special permit for liquor sales just recently which the Director has been asked to approve administratively; however, he chose not to because he believed it needed to have the opportunity for public input. Carlson stated that he is not in any way trying to refute the reputation of the Planning Department, but he wants the public to have an opportunity to know about it. Hill also pointed out that there is no legal notice on final plats now, except that they are listed on the agenda.

Carlson confirmed that the landscape plan amendment only pertains to plats. Hill concurred. Landscape plans will still be required with special permits, community unit plans, etc.

Carlson referred to p.221 of the agenda, the amendment to 26.33.110 regarding waivers and appeals, specifically the requirement to pay a fee to appeal "one or more conditions of approval to the higher level of authority". Philosophically, Carlson believes there should not be a charge for someone to get in front of their elected official. Hill explained that the proposed fees are to help offset the cost of processing these applications. Whoever is making the appeal is adding more expense to the project and there is additional cost involved in processing it and there should be a fee for it.

#### **COUNTY CHANGE OF ZONE NO. 215**

#### **(LANCASTER COUNTY ZONING RESOLUTION)**

#### **ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 6, 2003

Steward moved approval, seconded by Krieser and carried 9-0: Bills-Strand, Larson, Duvall, Carlson, Krieser, Taylor, Marvin, Steward and Schwinn voting 'yes'.

**COUNTY MISCELLANEOUS NO. 03006**  
**(LANCASTER COUNTY SUBDIVISION RESOLUTION)**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 6, 2003

Steward moved approval, seconded by Krieser and carried 9-0: Bills-Strand, Larson, Duvall, Carlson, Krieser, Taylor, Marvin, Steward and Schwinn voting 'yes'.

**CHANGE OF ZONE NO. 3415**  
**(CITY ZONING ORDINANCE)**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 6, 2003

Steward moved approval, seconded by Krieser and carried 9-0: Bills-Strand, Larson, Duvall, Carlson, Krieser, Taylor, Marvin, Steward and Schwinn voting 'yes'.

**MISCELLANEOUS NO. 03005**  
**(CITY LAND SUBDIVISION ORDINANCE)**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 6, 2003

Taylor moved approval, seconded by Steward.

Carlson moved to amend 26.33.110, striking the portion dealing with the "appeal of one or more conditions of approval", seconded by Steward.

Carlson believes that people should have the opportunity to go to their elected official to appeal a condition of approval without paying an additional filing fee.

Motion to amend carried 9-0: Bills-Strand, Larson, Duvall, Carlson, Krieser, Taylor, Marvin, Steward and Schwinn voting 'yes'.

Main motion, as amended, carried 9-0: Bills-Strand, Larson, Duvall, Carlson, Krieser, Taylor, Marvin, Steward and Schwinn voting 'yes'.

**CITY/COUNTY MISCELLANEOUS NO. 03007**  
**(COMPREHENSIVE PLAN AMENDMENT FEE)**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 6, 2003

Bills-Strand moved to deny, seconded by Schwinn.

Bills-Strand indicated that she was struggling with this one. This creates a real political situation, whether it starts at this level or all the way to the top, as to who can get the Planning Director to bring forward the amendment for free or who has to pay.

Carlson noted that in the most recent Annual Review there were amendment requests that the Commission had already seen two, three and four times. In that circumstance the staff does generate a lot of staff hours.

Taylor stated that he will vote against the motion to deny. He does not think it is going to be that big of a deal.

Steward stated that he is not prepared to support the denial, but he still has a concern which he believes can be worked out with a minor amount of change.

Schwinn also has concerns. The Commission did see a lot of frivolous requests for changes but he also believes the Comprehensive Plan is a public document and a document that should get input from the public. He is not sure we should charge the public to give us input. He does have some concerns about this eliminating a certain portion of the public.

Duvall commented that there is no fee to get a bill before the State Legislature.

Motion to deny carried 8-1: Bills-Strand, Larson, Duvall, Carlson, Krieser, Marvin, Steward and Schwinn voting 'yes'; Taylor voting 'no'.

**MISCELLANEOUS NO. 03008**

**(TITLE 14 - STREET VACATION PROCESS)**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

August 6, 2003

Larson moved approval, seconded by Bills-Strand and carried 9-0: Bills-Strand, Larson, Duvall, Carlson, Krieser, Taylor, Marvin, Steward and Schwinn voting 'yes'.